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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,240	03/11/2004	Dale J. Carter	2635.CIRQ.NP	3555
26986	7590	11/06/2006	[REDACTED]	EXAMINER
MORRISS O'BRYANT COMPAGNI, P.C. 136 SOUTH MAIN STREET SUITE 700 SALT LAKE CITY, UT 84101			TRAN, HENRY N	
			[REDACTED]	ART UNIT
				PAPER NUMBER
			2629	

DATE MAILED: 11/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/798,240	CARTER ET AL.	
	Examiner	Art Unit	
	Henry N. Tran	2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 August 2006.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10, 12-23 and 25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10, 12-23 and 25 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 28 August 2006 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. The Amendment received August 28, 2006 has been entered. Claims 1-10, 12-23 and 25 remain pending in this application. Applicants' Remarks have been fully considered; and this Office action is in response thereto.

Important Notice To Applicants

2. The amendment to the claims received on 8/28/06 does not comply with the requirements of 37 CFR 1.121(c) because the canceled claims 11 and 24 presented with claim texts that are noncompliant with 37 CFR 1.121 (c)(4)(i); see M.P.E.P § 714 [R-5]. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c)(4)(i) which states:

(4) When claim text shall not be presented; canceling a claim.

(i) No claim text shall be presented for any claim in the claim listing with the status of "canceled" or "not entered."

However, in order to reduce the processing time, the Amendment has been considered.

An amendment submitted to the Office is required to comply with 37 CFR 1.121.

Response to Arguments

3. Applicants' amendments have overcome the objections and rejections with respect to the Drawings, Specification, IDS, and Claim rejections under 35 U. S.C § 112 recited in the prior Office action.

4. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new grounds of rejection discussed hereinafter.

Claim Rejections - 35 USC § 112

5. following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-10, 12, 14-23 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase “such that a user will only” recited in line 9 renders the claim indefinite because one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For the purpose of this Office action, the phrase “such that a user will only” is changed to --for a user to only--.

Regarding claims 9, 10, 22 and 23, the phrases “that can sense” render the claims indefinite. For the purpose of this Office action, said phrases “that can sense” are changes to --that senses--.

Regarding claim 12, the phrase “the functions that can be activated” renders the claim indefinite. For the purpose of this Office action, the phrase is changed to --the function that is activated--.

Regarding claim 14, the phrase “such that a user can make” render the claim indefinite. For the purpose of this Office action, the phrase “such that a user can make” is changed to -- for a user to make --.

Regarding claim 15, the phrase “the functions above” renders the claim indefinite. For the purpose of this Office action, the phrase is changed to -- the electronic appliances above--.

Regarding claim 25, the phrase “providing functions that can be activated” renders the claim indefinite. For the purpose of this Office action, the phrase “providing functions that can be activated” is changed to -- providing the function that is activated --.

Applicants are required to make appropriate corrections in response to this Office action.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 4, 13-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (U.S. Patent No. 6,292,674) in view of Rekimoto (U.S. Patent No. 6,567,068).

9. Regarding claims 1 and 2, Davis, figures 1 and 3, teaches a portable electronic appliance, which is a mobile telephone (10), comprising: a portable electronic appliance having a housing (12), a data entry device (26) and a display screen (30); a first sensor (504) (a motion sensing switch 504, see figure 5, and col. 6, lines 9-13) at least one second sensor (304) (a capacitive switch 304, see figure 3) disposed on a surface of the housing for a user to only make physical contact with the at least one second sensor to thereby actuate the at least one second sensor; and wherein the first sensor and the at least one second sensor provides contact data to a sensor circuit 346 (a switch Detector 346) disposed within the within the portable electronic appliance, wherein the contact data in the sensor circuit is utilized by a processor 22 (a Controller 22) within the portable electronic appliance to determine whether or not to activate or deactivate a

predetermined function of the portable electronic appliance; see col. 4, lines 13-41; col. 5, lines 12-20; and lines 42-64.

However, Davis does not expressly teach that the first sensor is capable of determining orientation of the portable electronic appliance in three dimensions.

Rekimoto, figures 1 and 2, teaches a portable electronic appliance, which is a personal digital assistant (50), which comprises a sensor (1) that is a gyro sensor capable of determining orientation of the portable electronic appliance in three dimensions; see col. 2, lines 57-62. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the sensor as taught by Rekimoto in the Davis device because this would provide the enhanced functionality of the cursor control or the GPS map view display; see figures 7 and 8; and col. 6, line 57 to col. 7, line 48. By this rationale, claims 1 and 2.

10. Regarding claim 4, Davis further teaches that the at least one second sensor 304 is a pressure sensitive switch (the user grasps and or squeezes the housing – see Fig. 2, col. 5, lines 29-36). Claim 4 is dependent upon the base claim 1; and is therefore rejected on the same reasons set forth in claim 1, and by the reason noted above.

11. Regarding claim 13, which comprises claimed elements and limitations of claim 1, rephrased to claim the second sensor is disposed underneath a surface of the housing. Davis further teaches that the second sensor (304) is disposed underneath a surface of the housing, see col. 5, lines 53-55. Claim 13 is therefore rejected on the same basis set forth in claim 1 and by the reason noted above.

12. Regarding claims 14, 15 and 17, which are method claims corresponding the apparatus claims 1, 2 and 4; and are therefore rejected on the same basis set forth in claims 1, 2 and 4.

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13. Claims 3, 5-10, 12, 16, 18-23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (U.S. Patent No. 6,292,674) in view of Rekimoto (U.S. Patent No. 6,567,068), hereinafter referred to as “Davis-Rekimoto”, as applied to claims 1 and 14 discussed above, and further in view of Smith et al (U.S. Patent No. 7,088,343, hereinafter referred to as “Smith”.

Davis-Rekimoto teaches generally all except for the second sensor comprises a capacitive touchpad capable of arcuate surfaces, or sensing touch, or proximity sensing, or performing a functional operation such as adjusting volume.

Smith teaches a portable electronic device comprise a capacitive touchpad (102) capable of arcuate surfaces, or sensing touch, or proximity sensing, or performing a functional operation such as adjusting volume; see figures 2-5; col. 10, lines 45-58; col. 11, lines 31, 61-66; and col. 17, lines 5-33. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the touchpad of Smith in the Davis-Casebolt device because this would provide an enhanced functionality of the device-operator interface. By this rationale, claims 3, 5-10, 12, 16, 18-23 and 25 are rejected.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry N. Tran whose telephone number is 571-272-7760. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bipin H. Shalwala can be reached on 571-272-7681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Henry N. Tran
Henry N Tran
Primary Examiner
Art Unit 2629